IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
CIRCUIT BENCH AT PORT BLAIR
****

PRESENT: HON'BLE JUSTICE PARTHA SARATHI SEN

SA/3/2025
With
SA/4/2025

SMT. USHA RAJU AND OTHERS ... APPELLANTS

Versus

SMT. RAMA MONDAL ... RESPONDENT

For the Appellants	: Mrs. Anjili Nag
For the Respondent	: Mr. K.M.B. Jayapal
Heard on	: 28.07.2026, 29.07.2026, 30.07.2026 and 31.07.2026
Judgment on	: 04.08.2026

PARTHA SARATHI SEN, J.

1. In this appeal the judgement and decree dated 29.03.2022 as passed in Other Suit No. 20/2016 by the Learned Civil Judge (Senior Division), North & Middle Andaman at Mayabunder and the common judgement and decree dated 18.07.2023 as passed in the Other Appeal No. 04/2022 and Other Appeal No. 05/2022 passed by the Learned Additional District Judge, North and Middle Andaman at Mayabunder are impugned.

2. At the time of admission of the instant two appeals following substantial questions of law were framed: -

A. Whether the Courts below were right in holding that period of limitation commences from 04.02.2015 when the heirs of T. Balakrishna i.e., when the plaintiff approached the legal heirs of T. Balakrishna for registration of sale deed in her favour and the latter refused to do so or the limitation would run from the date when T. Balakrishna in 2007, in his letter to the Tehsildar (Exhibit-C) unequivocally denied to have executed the sale agreement and disputed his signature on the document.

B. Whether the Courts below erred in law in dismissing the counter-claim of the appellant/defendant on the ground of limitation without considering the case of the defendant that the plaintiff was in permissive possession of the land and the possession became unlawful only in 2007 when the plaintiff refused to vacate the suit property and the counterclaim had been filed in 2016 i.e., within 12 years from the date of hostile claim on the land by the plaintiff i.e., in 2007.

3. For effective adjudication of the instant two second appeals which are taken up for hearing analogously on consent of both the parties, the facts leading to filing of the instant two appeals are required to be dealt in a nutshell and those are as under:-

i. The plaintiff who is the respondent in the present two appeals has filed a suit being O.S. No. 20/2016 against the defendants who are the appellants before this court, for a decree for execution of a registered sale deed in respect of the suit property in favour of the plaintiff as per the agreement of the sale dated 26.03.1993, for decree for permanent injunction alternatively a decree against the defendants to pay the plaintiff the cost of the development, modification etc., and the cost of the construction of Semi-RCC house on the suit property alongwith 18% interest.

ii. The defendants of the said suit who are the appellants before this court filed their written statements denying each and every averments of the plaint.

iii. In the self-same written statement, the appellants/ defendants have also filed their counter claim praying for decree for declaration of their title in respect of the suit property, a decree directing the plaintiff/respondent to vacate the suit property alongwith other ancillary reliefs.

iv. The said suit No. O.S. 20/2016 was decreed on contest against the defendants/appellants herein by a judgement and decree dated 29.03.2022 by the Trial Court and by the self-same judgement and decree the defendants'/ appellants' counter claim was dismissed.

v. Challenging the judgement and decree as passed by the Learned Trial Court in O.S. 20/2016 the defendants/ appellants preferred Other Appeal No. 04/2022 before the first Appellate Court. Similarly, challenging the dismissal of the counter claim the defendants/ appellants preferred another appeal being Other Appeal No. 05/2022 also before the self-same first appellate court.

vi. The said two appeals being Other Appeal No.04/2022 and Other Appeal No. 05/2022 came to be disposed of by a common judgement dated 18.07.2023 whereby and whereunder both the appeals were dismissed on contest.

vii. The Judgement and decree of the Trial Court dated 29.03.2022 as passed in Other Suit No. 20/2016 and the common judgement and decree as passed in the aforementioned two appeals bearing numbers 04/2022 and 05/2022 are impugned in these two appeals wherein the aforementioned two substantial questions of law have been framed by a Hon'ble Division Bench of this Court.

4. At the time of hearing, Ms. Nag, Ld. Senior Advocate appearing on behalf of the defendants/appellants draws attention of this Court to the pleadings of the plaint of Other Suit No. 20/2016. Drawing attention to paragraph 8, 16 and 18 of the plaint its argued by Ms. Nag that it is the specific plaint case that cause of action for the said suit arose for the first time on 26.03.1993 when the plaintiff allegedly

entered into an agreement for sale with the predecessor-in-interest of the defendants for purchasing the suit property and then on 04.02.2015 when the defendants refused to execute the registered deed of sale in favour of the plaintiff.

5. Drawing attention to the written statement as filed before the Learned Trial Court it is argued by the Ms. Nag that in such written statement, the defendants have categorically stated that the suit as filed is barred by the Law of Limitation and from paragraph 6 of the said written statement, it would reveal that it was the specific case of the defendants/appellants herein that cause of action of the said suit arose in the year 2007 when the predecessor-in- interest of the defendants/appellants namely; T. Balakrishna initiated a revenue case immediately after submission of a representation dated 06.03.2007. In course of her submission, Ms. Nag also took me to Page No. 117-120 being the copies of the order sheets of the aforementioned revenue case as initiated under Section 161 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 ('Regulation' in short) which has been exhibited before the Learned Trial Court as exhibit-A (series).

6. Drawing attention to Page No.30 & 31 of the Paper Book being a copy of the deposition of PW-1 in O.S. No. 20/2016 before the Learned Trial Court it is submitted by Ms. Nag that from the cross-examination of PW-1 of the said suit, it would reveal that the PW-1 who is the plaintiff before the Trial Court in his cross-examination

categorically stated that in the year 2007, one T. Balakrishna, since deceased the predecessor-in-interest of the defendants/appellants made a complaint and in such case, he (the plaintiff) appeared before the Tehsildar. Ms. Nag argued further that on conjoint perusal of the cross-examination of the PW-1 in the said suit before the Trial Court and exhibit-A (Series) of the self-same suit, it would reveal that in the year 2007 it was very much within the knowledge of the plaintiff that the predecessor-in-interest of the defendants had specifically denied that he had executed any agreement for sale in respect of the suit property in favour of the plaintiff.

7. Ms. Nag contended that Article 54 of the Limitation Act, 1963 clearly prescribes 03 years of period of limitation for a suit for performance of contract and time from which the period of the limitation begins to run is the date fixed for the performance or, if no such date is fixed, when the plaintiff has noticed that performance is refused. It is argued by Ms. Nag that from deposition of PW-1 in the said suit before the Trial Court read with exhibit-1 series in the said suit, it would reveal that the plaintiff had definite knowledge regarding refusal by the defendant's predecessor-in-interest in the year 2007 and thus, both the Learned Trial Court and the First Appellate Court have committed serious error in holding that the said suit has been filed within the period of limitation though the same was filed in the year 2016.

8. To substantiate her contention, Ms. Nag also draws attention of this court to page No. 31 of the paper book being the cross-examination of PW-1 as held on 14.03.2018. It is submitted that on careful scrutiny of the cross-examination of PW-1 dated 14.03.2018, it would reveal that PW-1 categorically stated that she had been to the office of the Tehsildar on the basis of complaint filed by one T. Balakrishna, since deceased being the predecessor-in-interest of the defendants/appellants herein wherein the said PW-1 put her signature in the papers containing the proceeding of the case before the Tehsildar which suggests that the plaintiff/respondent had knowledge regarding refusal by the defendant's predecessor-in-interest during the pendency of the proceeding in the revenue case before the Tehsildar in the year 2007 and thus the plaintiff ought to have filed a suit for specific performance within three years from the date when she had noticed that performance is refused i.e. in the year 2010.

9. Drawing attention to page No.121 to 122 of the paper book, being a copy of an undated letter as issued by the plaintiff/respondent to the jurisdictional Tehsildar, which has been exhibited before the Learned Trial Court, it is argued by Ms. Nag that from such letter it would reveal that the plaintiff lodged a complaint against the predecessor-in-interest of the present defendants regarding non-registration of the sale deed in respect of the suit

property and the said letter was issued during the lifetime of T.Balakrishna who died on 25.07.2013.

10. It is further submitted by Ms. Nag that from the said undated letter it would reveal that on or before 27.05.2013, the plaintiff/respondent herein had definite knowledge with regard to the alleged refusal of the specific performance by T.Balakrishna even then the suit for specific performance was filed on 21.07.2016, i.e., more than after 3 years which shows and establishes that suit for specific performance as filed by the plaintiff/respondent is hopelessly barred by law of limitation.

11. It is submitted by Ms. Nag that since the suit before the Learned Trial Court was filed on 21.07.2016 both the Learned Trial Court as well as the first Appellate Court ought to have held that the Other Suit No.20/2016 as filed by the plaintiff respondent No.16 is barred by law of limitation.

12. Drawing attention to the second substantial question of law as framed in connection with the instant appeal, Ms. Nag took me to page Nos. 21 to 24 of the paper book which contains a copy of the written statement (typed as a written objection) as filed by the plaintiff against the counter claim of the defendant/ appellant herein. It is submitted that in such written statement against the counter claim in paragraph 8 and 9, the plaintiff had stated that the counter claim is barred by limitation which has been upheld by the Learned Trial Court in his impugned judgement dated 29.03.2022. Drawing

attention to internal page No. 14 of the impugned judgment of the Learned Trial Court it is argued by Ms. Nag that in such judgement the Trial Court has shifted the burden to the shoulder of the defendants to prove that the limitation for the suit for Specific Performance as filed by the plaintiff was not within the period of limitation. It is submitted by Ms. Nag that the Learned Trial Court has miserably failed to notice that it is the bounden duty of the plaintiff to prove that the suit has been filed within the period of limitation.

13. It is further submitted by Ms. Nag that the Learned Trial Court made no discussion regarding the limitation of the counter claim especially when from exhibit-C being a copy of letter dated 06.03.2007 as written by T.Balakrishna, since deceased to the jurisdictional Tehsildar, it would reveal that in respect of the suit property possession of the plaintiff becomes adverse to the said T.Balakrishna, predecessor-in-interest of the defendants/appellants herein on 06.03.2007 and thus under Article 65 of the Limitation Act the period of limitation is 12 years from 06.03.2007 and since the counter claim has been filed in the month of June 2017 there cannot be any occasion to hold that the defendant's/appellant's counter claim is barred by law of limitation and thus is not maintainable as wrongly held by the Learned Trial Court, which has also been echoed by the Learned First Appellate Court in its common judgment dated

18.07.2023 as passed in Other Appeal No.04/2022 and Other Appeal No. 05/2022.

14. Drawing attention to the page No. 189 of the paper book being the internal page No.11 of the impugned judgment as passed by the first Appellate Court, it is further submitted by Ms. Nag that the Learned First Appellate Court has miserably failed to construe the true purport of section 22 of the Limitation Act inasmuch as the first Appellate Court miserably failed to distinguish the words 'breach' and 'refusal'. It is further submitted by Ms. Nag that the Learned First Appellate Court most mechanically endorsed the view taken by the Learned Trial Court with regard to limitation and maintainability of the suit for specific performance as filed by the plaintiff/ respondent herein and the counter claim as filed by the defendants/appellants herein.

15. It is further submitted by Ms. Nag that both the Learned Trial Court and the first Appellate Court have miserably failed to notice that the plaintiff before the Learned Trial Court could not prove by adducing sufficient evidence that the defendants refused to execute a registered deed of sale in favour of the plaintiff on 04.02.2015.

16. It is further submitted by Ms. Nag that the First Appellate Court ought not to have come to a finding in his judgement dated 18.07.2023 that the defendants in their counter claim should have make a prayer for a decree for cancellation of the agreement for sale dated 26.03.1993 inasmuch as the defendants in their counter claim

have not only sought for declaration of their title in respect of the suit land but also have prayed for a decree for recovery of possession of the suit property by evicting the plaintiff therefrom.

17. In course of her submission Ms. Nag placed her reliance upon the following reported decisions namely: -

i. **Hazari Lal (Dead) Thr. Lrs V. Ramesh Kumar & Others** – reported in **2023 (17) SCC 334**.

ii. The judgment dated 20.03.2026 as passed by a coordinate bench of this Court in **SA/5 of 2024** in the case of – **Shri Sudhir Chandra Das V. Gopal Mistry & Ors.**

iii. **The judgement dated 13.04.2018** as passed by a Hon'ble Supreme Court in **Civil Appeal No. 3777 of 2018** in the case of **- Sucha Singh Sodhi (D) Thr. LRs. V. Baldev Raj Walia & Anr.**

iv. **The judgment dated 11.07.2025** as passed by a coordinate bench of this court in **SA/09/2024** in the case of **Shri Abhilash Chandra Roy V. Smt. Sukhoda Roy**.

18. It is thus submitted by Ms. Nag that this is a fit case for allowing the instant two appeals by setting aside the impugned judgements as passed by the Learned Trial Court and the First Appellate Court.

19. Per Contra, Mr. Jayapal, Learned Advocate appearing on behalf of the plaintiff/respondent in the instant appeal in course of his argument at the very outset draws attention of this court to page No. 84 and 85 of the paper book being a copy of the alleged agreement for sale as has been exhibited before the Learned Trial Court as exhibit-1. Drawing attention to clause-6 of the said agreement for sale (exhibit-1) it is argued by Mr. Jayapal that the said clause No. 6 of the said agreement for sale clearly indicates that no time limit has been fixed for execution of the registered deed of sale in favour of the plaintiff by the predecessor-in-interest of the defendant i.e. T.Balakrishna, since deceased. It is thus submitted that the true purport of the said clause No.6 ought to have been viewed in the perspective of second part of the time limit as prescribed under Article 54 of the Limitation Act.

20. Drawing attention to the copy of the plaint it is argued by Mr. Jayapal that on conjoint perusal of paragraph No.13, 15 and 16 of the said plaint it would reveal that it was never the case of the plaintiff/respondent herein that the said T.Balakrishna ever refused to execute the registered deed of sale in respect of the suit property in favour of the plaintiff/respondent herein during his lifetime and on the contrary it was the case of the plaintiff/ respondent that it was the defendants being the successor-in-interest of T.Balakrishna who refused to execute the registered deed of sale in favour of the plaintiff in respect of the suit property for the first time on

04.02.2015. It is further submitted by Mr. Jayapal that to substantiate such pleading the PWs have adduced sufficient evidence in the said suit which could not be controverted at the time of their respective cross-examinations and thus Learned Trial Court as well as the First Appellate Court were very much justified in holding that the suit as filed by the plaintiff/respondent herein is not barred by law of limitation.

21. Drawing attention to page no.127 of the paper book being the copy of the letter dated 06.03.2007 as allegedly written by T.Balakrishna addressed to the jurisdictional Tehsildar (exhibit-C) vis-à-vis page no.117 to 119 being the order sheets of a proceeding under Section 161 of Regulation it is submitted by Mr. Jayapal that Regulation 161 of the said Regulation deals with the subject of reinstatement of a tenant by a Tehsildar who has been wrongfully ejected from the land as held by him.

22. It is submitted by Mr. Jayapal that mere participation in a proceeding under Regulation 161 of the said Regulation by no stretch of imagination can be considered as a notice of refusal either by the defendants or by their predecessor-in-interest to perform the contract. It is submitted by Mr. Jayapal that plaintiff's participation in Regulation 161 proceeding before the Tehsildar was mainly to resist the unlawful claim of T.Balakrishna and nothing more.

23. At this juncture Mr. Jayapal draws attention of this court to the page No. 74 of the paper book, being the relevant part of the

cross-examination of the DW-3 before the Learned Trial Court. It is submitted by Mr. Jayapal that in his cross-examination DW-3 categorically stated that his father never tried to dispossess the plaintiff from the suit land with the help of Tehsildar. It is thus submitted by Mr. Jayapal that in view of such candid admission of DW-3 who is one of the defendants in the said suit, the argument of Ms. Nag that the plaintiff has knowledge of refusal by T.Balakrishna regarding alleged non performance of the agreement for sale in the year 2007 has no leg to stand upon.

24. It is further argued by Mr.Jayapal that though in their counter claim the defendants/appellants have prayed for declaration of their title in respect of the suit property, however, in such counter claim no prayer has been made for cancellation of the registered deed of sale as has been executed by T.Balakrishna in favour of the plaintiff/respondent herein and such factum was duly noticed by the Learned Trial Court and the First Appellate Court and thus the said Courts have rightly come to a concurrent finding that the counter claim as filed by the defendants/appellants herein are not maintainable in the eye of law which may not be disturbed by this court sitting in second appeal. It is further submitted by Mr.Jayapal that from the deposition of DW-1 it would reveal that the plaintiff/respondent herein was in possession of suit property since 1993.

25. In course of his submission, Mr. Jayapal, Learned Advocate appearing on behalf of the plaintiff/respondent further draws attention of this court to page Nos. 146 to 148 of the paper book being internal page Nos. 12 to 14 of the impugned judgement of the Learned Trial Court. It is submitted by Mr. Jayapal that in those pages the learned Trial Court has elaborately dealt with the entire factual aspects involved in the said Other Suit No. 20/2016 and in doing so, the Learned Trial Court duly scrutinized the evidence of PWs more specifically PW-1, PW-2 and PW-3 and found that the agreement for sale (exhibit-1) has been proved without objection and is/ are legally enforceable contract. It is further submitted by Mr. Jayapal that in self- same judgement, Learned Trial Court noticed that in paragraph 16 of the plaint, the plaintiff specifically pleaded that the cause of action for the suit arose on 04.02.2015 when the plaintiff approached the defendants to execute and registered the sale deed in respect of the suit property in favour of her but the defendants refused to do so.

26. It is further submitted that the Learned Trial Court in his impugned judgement dated 29.03.2022 also recorded that the plaintiff has adduced sufficient evidences with regard to such refusal by the defendants on 04.02.2015, however on behalf of the defendants PW-1 was not cross- examined in that regard.

27. It is further submitted by Mr. Jayapal that in the impugned judgement dated 29.03.2022, Learned Trial Court has rightly noticed the provisions of Article 54 of Limitation Act and applied the principles enumerated therefrom in the facts and circumstances as involved in the *lis* before him and came to a logical conclusion that the suit filed by the plaintiff is very much within the period of limitation holding that the plaintiff was successful to prove that the cause of action that the said suit arose on 04.02.2015.

28. Drawing attention to page Nos. 158, 159 and 160 of the paper book being the internal page Nos. 24 to 26 of the impugned judgement dated 29.03.2022 as passed by the Learned Trial Court, it is further argued by Mr. Jayapal that the Learned Trial Court, while examining the point of limitation of the counter claim, as filed by the defendants duly considered Regulation 161 of the said Regulations and rightly came to a conclusion that even after dismissal of the said revenue proceeding, the predecessor-in-interest of the defendant and/ or the defendant before him for the reason best known to them made no endeavour to file a suit for cancellation of the said agreement for sale (exhibit-1) either in the year 2007 or soon thereafter.

29. It is thus submitted that the Learned Trial Court considering such aspect of the matter, rightly came to a finding that the counter claim as filed by the defendants is hopelessly barred by law of limitation.

30. At this juncture Mr. Jayapal took me to page Nos. 189 to 191 of the paper book being internal page Nos. 11 to 13 of the impugned common judgement dated 18.03.2023 as passed in the aforementioned two Other Appeals by the First Appellate Court. It is submitted by Mr. Jayapal that the Learned First Appellate Court on further appraisal of the facts and appreciation of the evidence as adduced before the Learned Trial Court took a concurrent view with the Learned Trial Court by holding that the suit filed by the plaintiff for specific performance of contract is within the period of limitation and the counter claim as filed by the defendants is barred by the law of limitation.

31. It is thus submitted by Mr. Jayapal that sitting in second appeal this court while deciding the aforementioned two substantial questions of law ought not to have entered into the factual arena as has been elaborately discussed by the Learned Trial Court and First Appellate Court since, under the law, appraisal of facts and re-assessments of the evidence in the stage of second appeal by the High Court is impermissible.

32. To substantiate his contention Mr. Jayapal placed his reliance by the following reported judgements:-

(i) **Ramanuja Naidu Vs. V.Kanniah Naidu and Another** reported in **(1996) 3 Supreme Court Cases 392**

(ii) **Commissioner, Hindu Religious & Charitable Endowments V. P.Shanmugama and Others** reported in **(2005) 9 Supreme Court Cases 232**

(iii) **State of Kerala and Another Vs. Mohd. Kunhi (Dead) by Lrs. And Others** reported in **(2005) 10 Supreme Court Cases 139**

(iv) **Karnataka Board of Wakf Vs. Anjuman –E-Ismail, Madris-Un-Niswan** reported in **(1999) 6 Supreme Court Cases 343**

33. This Court has meticulously gone through the entire materials as placed before it. This Court has given due consideration over the submissions of the Learned Advocates for the contending parties.

34. For effective adjudication of the instant second appeal, this court at the very outset proposes to look to section 100 of the Code of Civil Procedure which reads as under: -

> *"**100. Second Appeal** (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.*
> *(2) An appeal may lie under this section from an appellate decree passed exparte.*
> *(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.*
> *(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.*
> *(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :*
> *Provided that nothing in this sub-section shall be deemed to take away or abridge the power of Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."*

35. On careful perusal of the aforementioned legislative provision, it thus appears to this court that it is the legislative intent that an

appeal shall lie to the High Court from the decree passed in appeal by any court subordinate to it if High Court is satisfied that the case involves a substantial questions of law. Admittedly in the instant appeal a common judgment and decree dated 18.03.2023 as passed by the Learned First Appellate Court in Other Appeal Nos. 04/2022 and 05/2022 is impugned and the Hon'ble Division Bench of this Court was satisfied that the instant second appeal involves two substantial questions of law and in doing so those questions have been formulated.

36. At this juncture, this court will make an endeavour to ascertain the scope of entertaining second appeal by the High Court and in the event the such second appeal is entertained what would be the approach of the High Court while deciding the second appeal. In the reported decision of ***Karnataka Board of Wakf (Supra)*** the Hon'ble Supreme Court while dealing with the duty of High Court in second Appeal expressed thus –

> *"12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.*
>
> *13. In Ramanuja Naidu V. V.Kannaiah Naidu [(1996) 3 SCC 392)] this Court held:*
> *"It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High court in exercise of its jurisdiction under Section 100 of Civil Procedure Code.*

The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under section 100 of the Code in the way he did."

14. In Navaneethammal V. Arjuna Chetty [(1996) 6 SCC 166] this court held :

"Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High court is not expected to reappreciate the evidence just to replace the findings of the lower courts. … Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

37. In the reported decision of **P. Shanmuga** (Supra) the Hon'ble Supreme Court expressed the following view :

6. At the very outset, we notice that, though the High Court was deciding the second appeal under Section 100 of the Code of Civil Procedure, it failed to act in accordance with the requirements of Section 100. It is trite law that under Section 100 CPC a High Court can entertain a second appeal only if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. Sub-section (5) stipulates that the appeal shall be heard on the question so formulated and the respondent shall at the hearing of the appeal be allowed to argue that the case does not involve such question. The mandatory requirements of this provision of law have been totally flouted by the High Court. The High Court has not indicated in the long judgement as to which was the substantial question of law, if any, considered, nor has it formulated the substantial question of law on which the decision in the second appeal was being given. The High Court has proceeded as if it were deciding a first appeal against a decree in original proceedings. On this ground alone the judgement is liable to be interfered with."

38. In the case of **Mohammed Kunhi** (Supra) the Hon'ble Supreme Court expressed the following view :

5. Having considered the submissions made by the learned counsel for the parties and looking to the reasons recorded by the trial court as well as the first appellate court, we have no hesitation in holding that the High Court committed an error in reversing the concurrent findings of fact recorded by the two courts below by

reappreciating the evidence placed on record. In fact, no substantial question of law did arise for consideration before the High Court. The substantial question of law formulated by the High Court at the time of admitting the appeal, in our view, again touches the appreciation of evidence in relation to Exhibits A-2 to A-4. We do not think it necessary to record detailed reasons again as we agree with the reasons recorded by the first appellate court in rejecting the case of the plaintiff having regard to Exhibits A-2 to A-4 and the other documentary and oral evidence. Hence, the appeal is allowed. The impugned judgment is set aside. No costs."

39. Keeping in mind the propositions of law as enunciated by the Hon'ble Supreme Court of India in dealing with the scope and ambit of entertaining the second appeal, this court will make an endeavour to answer the aforementioned two substantial questions of law in this judgement.

40. In order to decide the substantial questions of law under the heading 'A' this court proposes to look to the plaint as filed by the Learned Trial Court. In paragraph 16 of the plaint, the plaintiff stated that on 04.02.2015 the plaintiff approached the defendants for registration of the sale deed in respect of the suit land in favour of the plaintiff but the defendants refused to do so. According to the plaintiff thus cause of action for the suit arose on 04.02.2015. As noted herein above in course of his argument Mr. Jayapal strongly contended that in order to substantiate such contention, the PWs before the Learned Trial Court had adduced sufficient oral evidence and none of the PWs have been cross-examined on that point as rightly observed by the Learned Trial Court in his impugned judgement dated 29.03.2022 which has been affirmed by the First

Appellate Court on appraisal of the facts and appreciation of the evidence. At this juncture, I propose to look to the page No.127 of the paper book being a copy of letter dated 06.03.2007 (exhibit-C) as written by T.Balakrishna to the jurisdictional Tehsildar complaining against the plaintiff on account of her alleged illegal encroachment over the suit property.

41. Materials have been placed before this court on the basis of such written complaint dated 06.03.2007, the jurisdictional Tehsildar initiated a revenue case under Regulation 161 of the said Regulation wherein the present plaintiff appeared and raised her defence by saying that in respect of the suit property an un-registered agreement was executed in her favour by the said T.Balakrishna.

42. I have repeatedly gone through the order sheets of the said revenue case which was marked before the Learned Trial Court as exhibit-A (collectively). It reveals that before the Tehsildar it was the specific case of the plaintiff/respondent herein that she came into possession of the suit property by virtue of an agreement for sale as has been executed in her favour by T. Balakrishna.

43. Such being the position, as rightly argued by Ms. Nag, Learned Senior Advocate appearing on behalf of the defendants that on the day of her appearance i.e. in the year 2007 before the jurisdictional Tehsildar the plaintiff came to learn and/or had noticed that the performance of the agreement for sale i.e. execution of the registered

deed of sale in her favour by T.Balakrishna was refused by the predecessor-in-interest of the defendants.

44. At this juncture, I propose to look into Article 54 of the Limitation Act which runs as under:-

Description of suit	Period of limitation	Time from which period begins to run
For specific performance of a contract	Three years	The date fixed for performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

45. Admittedly in the alleged unregistered agreement for sale (exhibit-1), no date was fixed for performance of the contract and in such event the time limit would be run when the plaintiff has noticed that performance is refused. From the facts and circumstances as involved in this appeal it appears that before the Learned Trial Court sufficient materials have been placed that in the year 2007, the plaintiff came to learn about the unwillingness/refusal on the part of T.Balakrishna to execute the registered deed of sale in favour of the plaintiff and therefore the period of limitation for filing the suit for specific performance would be three years from the year 2007 i.e. up to the year 2010.

46. Admittedly the plaintiff has filed the suit for specific performance in the year 2016 which is beyond the period of limitation as prescribed under Article 54 of the Limitation Act and thus this court is constraint to hold that both the Learned Trial

Court and the First Appellate Court have erred in law in holding that Other Suit No. 20/2016 as filed by the plaintiff is barred by law of Limitation. In view of such this court holds that the findings of the Learned Trial Court and the First Appellate Court that the suit was filed within the period of limitation are not correct in the perspective of Article 54 of Limitation Act and thus, such findings are set aside and the substantial questions of law as framed under the heading 'A' is answered accordingly.

47. In order to decide the substantial question of law under the caption 'B', it appears that in their counter-claim the defendants have prayed for declaration of their title in respect of the suit property alongwith a prayer for decree of eviction against the plaintiff. In this regard this Court proposes to look to Article 65 of the Limitation Act which reads as under : -

Description of suit	Period of limitation	Time from which period begins to run
For possession of immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

48. At this juncture, if I once again look to the plaint as filed before the Learned Trial Court it appears that it is the plaint case that on 04.02.2015 the defendant refused to execute a registered deed of sale in favour of the plaintiff. In the written statement, the defendant have denied such allegation specifically and in their written

statement, they stated about a representation dated 06.03.2007 as submitted by their predecessor-in-interest before the jurisdictional Tehsildar under cover of which according to the defendant the said T. Balakrishna complained regarding alleged illegal encroachment by the plaintiff over the suit property.

49. On careful perusal of the evidence, both oral and documentary, as adduced by the PWs and DWs, it appears to this Court that before the Learned Trial Court apart from the oral evidence, the DWs have proved the said letter as written by T. Balakrishna on 06.03.2007 which has been exhibited as exhibit-C. The proceedings before the jurisdictional Tehsildar as initiated under Regulation 161 of the said Regulations was exhibited as exhibit-A (series) from which it appears that the plaintiff resisted the claim of T. Balakrishna by producing the alleged unregistered agreement as has been executed in her favour in respect of suit property.

50. Such being the position, it thus appears to this Court that the possession of the plaintiff in respect of the suit property become adverse to the defendant in the year 2007 and therefore the defendants of the said suit by way of counter claim rightly approached the Learned Trial Court in the year 2016 i.e., within 12 years.

51. In considered view of this Court, both the Learned Trial Court and First Appellate Court for the reasons best known to them miserably failed to visualize the true purport and implication of

Article 65 of the Limitation Act in respect of the facts and circumstances of the counter claim as filed by the defendants.

52. In view of such, this Court holds that the counter claim as filed by the defendant for declaration of their title over the suit property and for eviction of the plaintiff therefrom has been filed very much within the period of limitation and thus the contrary view taken by the Learned Trial Court and the Learned First Appellate Court are hereby set aside and the substantial question of Law as framed under heading 'B' is answered accordingly.

53. Consequently the instant two appeals being SA/3/2025 and SA/4/2025 are hereby allowed.

54. Consequently, the common judgement and decree dated 18.07.2023 as passed in the Other Appeal No. 04/2022 and Other Appeal No. 05/2022 by the Learned Additional District Judge, North and Middle Andaman at Mayabunder are hereby set aside.

55. Consequently the judgement and decree dated 29.03.2022 passed in Other Suit No. 20/2016 by the Learned Civil Judge (Senior Division), North and Middle Andaman at Mayabunder is hereby dismissed on contest.

56. Consequently the counter claim as filed by the defendants in Other Suit No. 20/2016 before the Learned Civil Judge (Senior Division), North and Middle Andaman at Mayabunder is hereby decreed.

57. Consequently the defendants in Other Suit No. 20/2016 gets a decree of declaration of their title in respect of the suit property as involved in Other Suit No. 20/2016.

58. The Plaintiff of Other Suit No. 20/2016 is hereby directed to quit, vacate and deliver up the khas and vacant possession of the suit property, particulars of which has been mentioned in the schedule of the plaint of Other Suit No.20/2016, positively within 30 days from the date of passing of this judgement failing which the defendants are at liberty to put the decree as passed by this Court into execution before the Court where Other Suit No. 20/2016 was instituted.

59. There shall be however no order as to costs.

60. Registry is directed to draw up the decree forthwith.

61. Trial Court Records be returned to the respective Courts alongwith the copies of this judgement.

62. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all legal formalities.

(PARTHA SARATHI SEN, J.)